IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

UNITED STATES OF AMERICA,
Petitioner,

No. 596. *vs.*

WALTER KORPAN,
Respondent,

UNITED STATES OF AMERICA,

No. 674. *vs.*

JAMES B. HUNT, ET AL.

UNITED STATES OF AMERICA,

No. 675. *vs.*

HAROLD A. OLLHOFF.

UNITED STATES OF AMERICA,

No. 723. *vs.*

MICHAEL D. MACK.

UNITED STATES OF AMERICA,

No. 724. *vs.*

JOSEPH CALI.

UNITED STATES OF AMERICA,

No. 725. *vs.*

EARL R. EDWARDS.

UNITED STATES OF AMERICA,

No. 726. *vs.*

HOWARD E. HATCH.

UNITED STATES OF AMERICA,

No. 727. *vs.*

PETE HARRIS, ET AL.

PETITION FOR REHEARING.

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In the midst of the great attention presently focused on important civil rights and economic decisions of this Court during the current term, it appears to be a work of supererogation to burden the Court with the pinball games of a small resort owner. Despite this and the notable inefficacy of petitions for rehearing, this petition is not only presented in good faith but with a sense of a duty to point out, respectfully, that the decision of the court violates most of the canons of statutory construction to which this court and its members have professed to adhere.

1. The fact that the case involves "gambling devices" should not determine the construction of the statute. The possible unpopularity of the subject-matter should not

cause the Court to "search for hints to find a command."[1] "But the judge, if he is worth his salt, must be above the battle. We must assume in him not only personal impartiality but intellectual disinterestedness. In matters of statutory construction also it makes a great deal of difference whether you start with an answer or with a problem."[2]

2. The opinion reads out of the statute three words—"so-called 'slot'"—in Section 4462(a)(2)—since the statute as now interpreted by the Court would have *precisely* the same meaning without them. In fact the arguments now adopted by the Court would have required the legislative draftsmen to eliminate the three words if

> "(1) the draftsmen were apprenhensive that the term 'slot-machine' might be a slang expression not accepted as proper English or
> "(2) they wanted to cover every gambling device operated by the insertion of coins through a slot even though the device might go under a label other than 'slot machine.'"

Both of the apprehensions would have been simply and conveniently avoided by striking out "so-called 'slot'". But the fact is that the words were not stricken by Congress but by the Court. "A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statemanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction * * *. Legislative words presumably have meaning and so we must try to find it."[3] "* * *

1. Dissent of Mr. Justice Frankfurter, joined by Mr. Justice Black and Mr. Justice Douglas, *United States* v. *Turley*, 77 S. Ct. 397 (1957) at 402.

2. Mr. Justice Frankfurter, *Of Law and Men* (1946) at 47.

3. *Ibid.* at 53.

the only sure safeguard against crossing the line between adjudication and legislation is an alert recognition of the necessity not to cross it and instinctive, as well as trained, reluctance to do so.'"[4]

3. The Court should not attribute greater weight to isolated statements in Congressional floor debate than to the contrary expressions in Congressional reports. The Court has ascribed no importance to repeated statements such as that appearing in the House Report and describing the scope of the lower tax category:[5]

> "Under this amendment there will be included *in addition to pin-ball machines* a great variety of other machines, such as baseball and football games, machine-gun games, music machines (so-called juke boxes), and many other types of coin-operated games."

Human communication is incapable of clearer expression than that appearing in the Senate and House reports. The Court chose to adopt contrary statements made during floor debate although as recently as during the current term it stated that debate is "not entitled to the same weight as these carefully considered committee reports."[6] "A painstaking, detailed report by a Senate Committee bearing directly on the immediate question may settle the matter. A loose statement even by a chairman of a committee, made impromptu in the heat of debate, less informing in cold type than when heard on the floor, will hardly be accorded the weight of an encyclical."[7]

4. The administrative interpretation relied on by the Court was ignored by the Treasury Department itself for more than twelve years. In a case decided during the current term, this Court said:

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4. *Ibid.* at 55.

5. H. R. Rep. No. 2333, 77th Cong., 2d Sess., page 180 (1942).

6. *United States* v. *International Union*, 77 S. Ct. 529 (1957) at 538.

7. *Op. cit.* n. 2, at 67.

> "The Government relies on the fact that a few soldiers who invoked the protection of the 1918 Act and allowed their policies to lapse were later required to reimburse [the Government]. However these collections were so sporadic and so insignificant that instead of supporting the Government's position they contradict it."[8]

5. The opinion of the Court states that "the remainder of § 4462(a)(2), as well as § 4462(c), has language which affirmatively suggests that § 4462(a)(2) was designed to include all sorts of coin-operated gambling devices regardless of their particular structure or the method by which they paid off players." A general "suggestion" in a statute is always deemed subordinate to the specific language—which, in this case clearly limited the higher tax to a "one-armed bandit" or "so-called 'slot' machine." In a case decided in the current term, this Court quoted the following with approval:

> "However inclusive may be the general language of a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment * * *. Specific terms prevail over the general in the same or another statute which otherwise might be controlling.' "[9]

6. Finally, as a justice of this Court said in another case decided during the current term, "I would not make the penal consequences of an Act turn on a construction so tenuous."[10]

7. In any event, since neither this Court nor the Court of Appeals passed upon the question of the wilfullness of

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8. *United States* v. *Plesha*, 77 S. Ct. 275 (1957) at 279.

9. *Clifford F. MacEvoy Co.* v. *United States*, 322 U. S. 102, 107, quoted in *Fourco Glass Company* v. *Transmirra Products Corporation*; 77 S. Ct. 787 (1957) at 791-2.

10. Dissent of Mr. Justice Douglas, joined by Mr. Justice Black, *Achilli* v. *United States*, 77 S. Ct. 995 (1957) at 999.

the respondent Korpan, this case should be remanded to the Court of Appeals for a decision upon that issue.

For the reasons stated, a rehearing of this case by this Court is prayed.

Respectfully submitted,

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I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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